

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA

Plaintiff

vs.

JOHN THOMAS ERMIN  
a/k/a "Tommy O"

Defendant

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**AFFIDAVIT IN OPPOSITION**

**Hon. Magistrate Judge  
Jeremiah J. McCarthy**

**CASE NO. 1:23-CR-99**

STATE OF NEW YORK     }  
                                      } SS:  
COUNTY OF NIAGARA    }

GEORGE V.C. MUSCATO, being duly sworn, deposes and says

1. I am the attorney for JOHN THOMAS ERMIN a/k/a "Tommy O" and as such am fully familiar with the facts and circumstances contained herein.

2. This affidavit is submitted in opposition to the government's motion to exclude time from the Speedy Trial Act from June 5, 2024, through June 27, 2024.

3. While I do not dispute the Government's statement of procedural history, the following should be emphasized to the court.

4. At our February 23, 2024, appearance the Government stated that they need an additional 30 days for a 90-day total primarily because of the significant amount of alleged discovery material that they would be turning over to us, as they agreed, on a rolling basis.

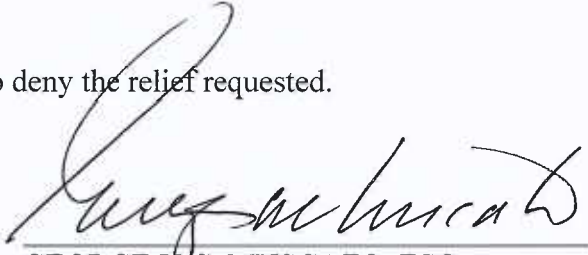
5. With respect to that statement, two things are apparent. First of all, they knew there was an extensive amount of discovery and the nature and content of it; and second of all, at any time the government could have forwarded a proposed protective order.

6. Even by the Government's own acknowledgement, at least on May 16, 2024, they had collected and organized the material and should have notified Defendants the need for a 3TB hard drive in order to transfer the material. This, of course, was one week before the due date.

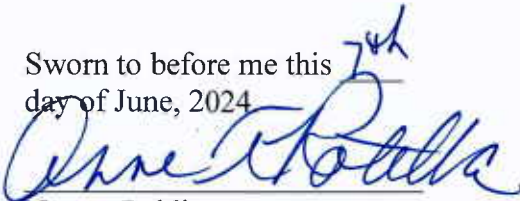
7. It is hard to believe, knowing the content of the material, that they waited approximately until May 29, 2024, to forward a proposed Protective Order. It would appear from the Affidavit of AUSA Cooper, he is attempting to shift the blame to the Defendants.

8. It was due to the Government's action prior to the due date of discovery that one could conclude that the court refused to exclude such time.

WHEREFORE, we would ask the Court to deny the relief requested.

  
GEORGE W.C. MUSCATO, ESQ.  
Attorney for Defendant,  
JOHN THOMAS ERMIN, a/k/a "Tommy O"

Sworn to before me this <sup>7th</sup>  
day of June, 2024

  
Notary Public

ANNE T. ROTELLA  
Notary Public, State of New York  
Qualified in Niagara County  
My Commission Expires 11/30/20 26